



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2626
www.raleighnc.gov

Case File: A-8-17

Property Address: 423 S. McDowell Street

Property Owner: Cherokee Holding, LLC

Project Contact: Michael Birch

Nature of Case: A request for: (1) a variance to article 3.4.2.C and 3.4.6. of the Unified Development Ordinance (UDO) to permit a proposed building expansion to the rear of the existing building which does not comply with the Green frontage standards. Additionally, this variance would permit parking within 20 feet of the primary street parking setback, parking between the building and the street, and the building expansion setback 5 feet from the side street instead of within the build-to area; (2) a variance to UDO Article 3.5, Neighborhood Transitions, including UDO Section 3.5.1.D., to permit the proposed building expansion to the rear which would permit the expanded building to be setback 7.5' from the alley right-of-way, without having to fully comply with the alley transition standards for Zones A, B and C of the neighborhood transitions; (3) a 4 parking space variance to UDO Article 7.1 to permit the proposed building expansion with only 16 parking spaces instead of the required 20 parking spaces ; and (4) a variance to UDO Section 8.4.7.B to avoid having to dedicate approximately 2.5' of right-of-way along the alley at the rear of the .26 acre property zoned Office Mixed-use-3-Green located at 1600 Hillsborough Street.

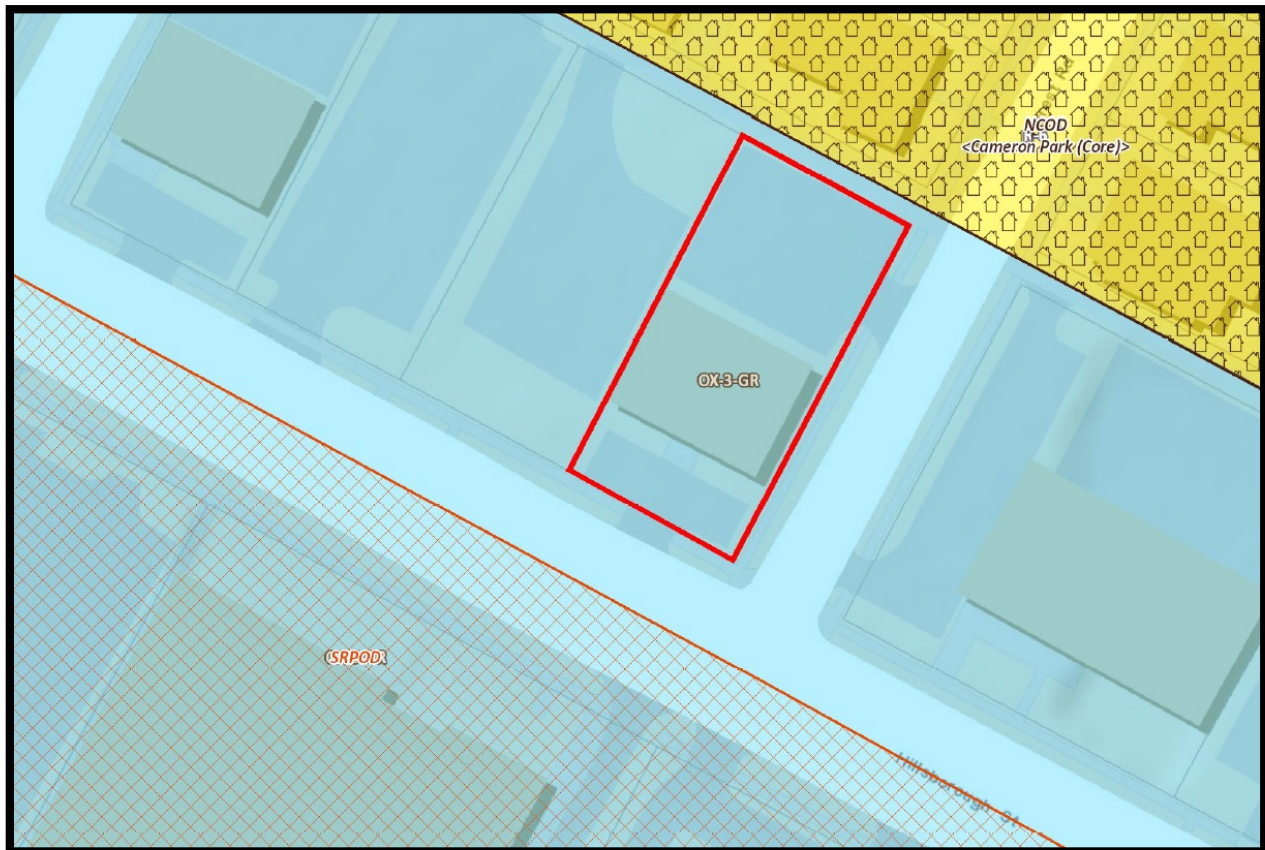


1600 Hillsborough Street – Location Map

To BOA: 1-9-17

Staff Coordinator: Eric S. Hodge, AICP

ZONING
DISTRICTS: Downtown Mixed-use-20 Shopfront



1600 Hillsborough Street – Zoning Map

VARIANCE STANDARDS: In accordance with UDO [§10.2.10 Variance](#), before a variance request is granted, the Board of Adjustment shall show all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that

circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

Zoning District Standards: The subject property is zoned Office Mixed-use-20 Green.

Office Mixed Use:

<u>Yard Type</u>	<u>Minimum Setback</u>
Primary Street	5'
Side Street	5'
Side	0' or 6'
Rear	0' or 6'
Alley	5'

Green:

Primary Street Build-to (min/max) 20'/50'

Building width in primary build-to (min) 50%

Side Street Build-to (min/max) 20'/50'

Building width in primary build-to (min) 35%

destruction. Replacement cost shall be determined in accordance with Sec. 10.3.3.6.4 and 5.

- e. Reconstruction or repair is commenced with a valid building permit or zoning permit within 12 months of the date of such damage or destruction.
2. Lots subject to build-to requirements that contain pre-existing buildings and maintain pre-existing buildings and which add additions to existing buildings that singularly or collectively comprise no more than 25% of the gross floor area existing at the time the build-to requirements became applicable to the property, or 1,000 square feet, whichever is greater, are allowed to expand the building anywhere within their minimum setbacks, without deference to the build-to requirements. All other frontage requirements, if any, shall apply.
3. Lots subject to build-to requirements that contain pre-existing buildings and maintain pre-existing buildings and which either add additions to existing buildings in excess of those allowed by item number 2. above or construct any new additional buildings on the lot shall conform to the following build-to requirements. All other frontage requirements, if any, shall apply.
 - a. Additions

Expansion of an existing building that is unable to meet the required build-to percentage must comply with the following provisions:

 - i. Street-Fronting: Addition

Additions to the front of an existing building would be allowed. The addition does not have to extend into the build-to area nor does it have to meet the required build-to percentage for the lot.

Sec. 3.4.2. General Requirements

A. Urban Frontages

The Urban Frontages include the following: Green, Urban Limited, Urban General and Shopfront.

B. Design of Parking Structures on Urban Frontages

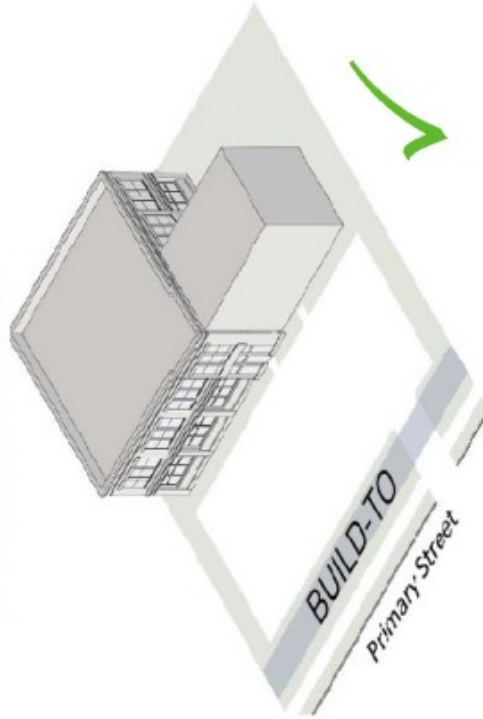
1. The ground story of structured parking must have active uses (such as, but not limited to, residential, commercial, office or civic space) located between the parking structure and any public sidewalk.
2. Where upper stories of structured parking are located at the perimeter of a building, they must be screened so that cars are not visible from adjacent streets. Sloped ramps cannot be discernible along the perimeter of the parking structure. Architectural and vegetative screens must be used to articulate the facade, hide parked vehicles and shield lighting. In addition, the ground floor facade treatment (building materials, windows and architectural detailing) shall be continued on upper stories.
3. Upper stories of parking structure facades shall be designed with both vertical (facade rhythm of 20 feet to 30 feet) and horizontal articulation (aligning with horizontal elements along the block).

C. Preexisting Conditions

1. All buildings, structures, pedestrian accesses, streetscapes and vehicular surface areas existing at the time that the frontage is first applied to the property shall not be deemed a zoning nonconformity solely because of frontage requirements. Replacement and repair of buildings, structures, pedestrian accesses, streetscapes and vehicular surface areas existing at the time that the frontage is first applied to the property may be made provided all of the following are met:
 - a. Replacement is like for like.
 - b. The replacement conforms to all provisions of this UDO except, frontage requirements.
 - c. The damage or destruction is caused by means other than voluntary actions.
 - d. Reconstruction and repair, not including interior work, shall not exceed 50% of the replacement cost immediately prior to the damage or

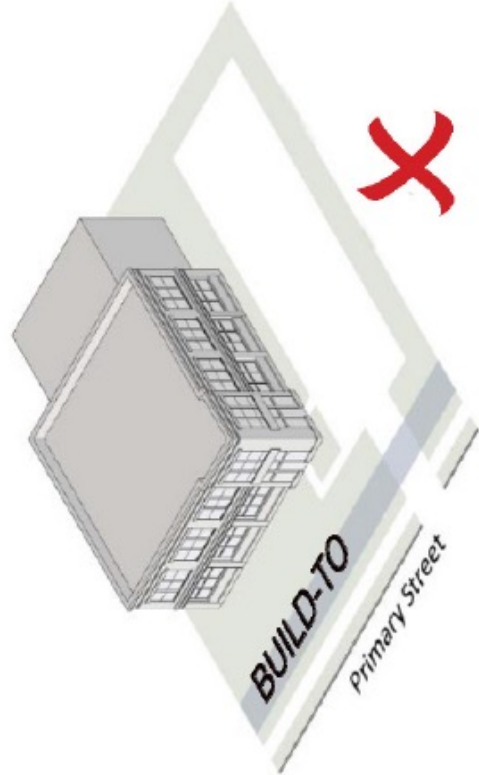
iii. Non-street Side: Addition

Non-street Side Additions are allowed where the side addition is at least as close to the build-to as the existing building because the extension increases the width of the building and does not set back any further than the existing building.



ii. Rear: Addition

Rear additions are not allowed until the required build-to percentage for the lot has been met except when the addition is used exclusively for one or more of the following: loading areas, storage, kitchens, repair facilities (including bays for motor vehicles) and mechanical equipment.

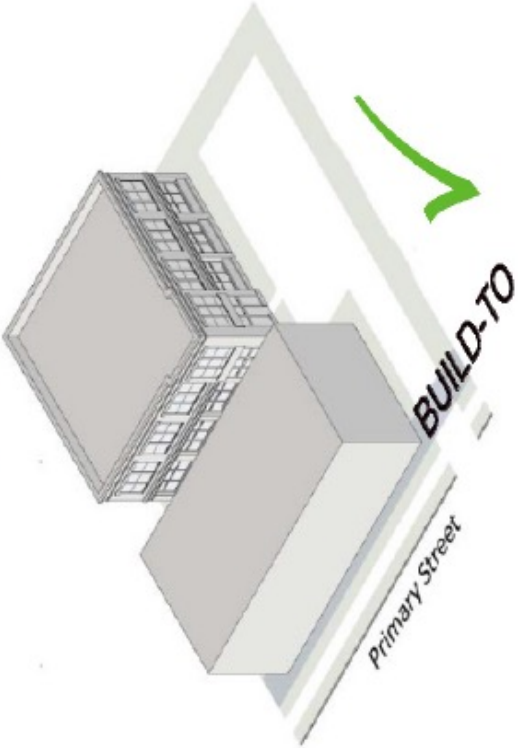


b. New Buildings

Where a new building is being constructed on a lot with an existing building that does not meet the build-to percentage requirement, the following provisions comply:

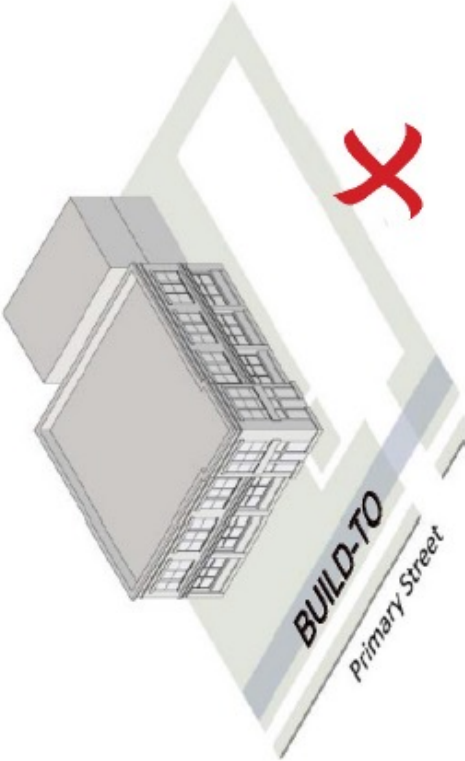
i. Street-Fronting: New Building

All new buildings must be placed in the build-to range until the required build-to percentage requirement has been met for the lot.



ii. Rear: New Building

New buildings located in the rear of existing buildings are not allowed until the required build-to percentage requirements have been met for the lot.



iii. Non-street Side: New Building

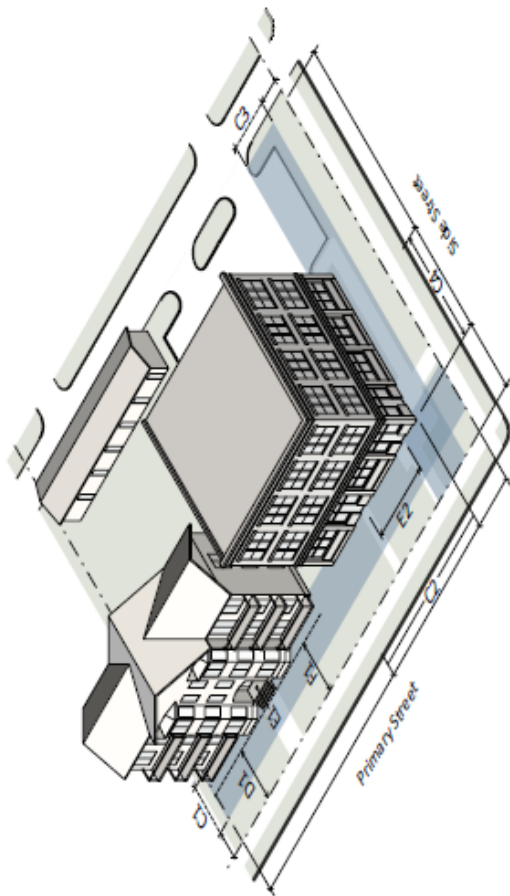
New buildings located outside of the build-to range are not allowed until the required build-to percentage requirements have been met for the lot.



4. The Planning Director may, in accordance with Sec. 10.2.17., reduce the build-to requirement, subject to the findings set forth in Sec. 1.5.6.D.
5. The streetscape requirements shall not apply whenever a plot plan is applicable in accordance with Sec.10.2.7.A.; in all other instances, the streetscape requirements shall apply. The additional parking limitations of this article shall be applied in accordance with Sec. 7.1.1.B.4. Related parking requirements of this UDO shall be in accordance with Sec. 7.1.1.B.
6. Lots subject to build-to requirements that contain buildings existing at the time the frontage regulations were first applied to the property may, without deference to the build-to requirements, make voluntary renovations or alterations changing the exterior appearance of such buildings, including vertical expansions, that do not enlarge the footprint of the existing buildings, when done in accordance with the transparency and streetscape requirements of this UDO, and the pedestrian access requirements of this UDO when the costs of the improvements exceed cumulatively \$10,000 in any one calendar year. Voluntary demolitions or tear-downs shall be replaced with building improvements that comply with the regulations of the applicable build-to requirements and all other frontage requirements.
7. In the event that buildings, structures, pedestrian accesses, streetscapes and vehicular surface areas existing at the time that the frontage is first applied to the property is damaged or partially destroyed, by exercise of eminent domain, riot, fire, accident, explosion, flood, lightning, wind or other calamity or natural cause to the extent of more than 50% of the replacement cost immediately prior to such damage, such buildings, structures, pedestrian accesses, streetscapes and vehicular surface areas shall not be restored unless either the replacement will conform to all regulations of this UDO or a special use permit is issued by the Board of Adjustment for the restoration. Replacement cost shall be determined in accordance with Sec. 10.3.3 G.4. and 5.

Before a request for the special use permit is granted, the Board of Adjustment must show that all of the following are met:

 - a. The applicable standards of this section have been met;
 - b. All of the showings of Sec. 10.2.9.E. have been met; and
 - c. The requested repair, reconstruction, or restoration will not be injurious to property or improvements in the affected area.



A. Description	
Intended for areas where it is desirable to locate buildings close to the street, but where parking between the building and street is not permitted. Requires a landscaped area between the building and the street right-of-way.	
B. Building Types Allowed	
Townhouse (see Sec. 3.2.3.)	Mixed use building (see Sec. 3.2.6.)
Apartment (see Sec. 3.2.4.)	Civic building (see Sec. 3.2.7.)
General building (see Sec. 3.2.5.)	Open lot (see Sec. 3.2.8.)
C. Build-to	
C1 Primary street build-to (min/max)	20'/50'
C2 Building width in primary build-to (min)	50%
C3 Side street build-to (min/max)	20'/50'
C4 Building width in side build-to (min)	35%
D. Additional Parking Limitations	
D1 Parking setback from primary street (min)	20'
D2 No on-site parking or vehicular surface area permitted between the building and the street	

E. Pedestrian Access	
E1 Primary street-facing entrance required	yes
E2 Street-facing entrance spacing (max)	100'
F. Landscape Yard Encroachments	
F1 Driveways	see Sec. 8.3.5.
F2 Ground signs	see Article 7.3
F3 Pedestrian access way	Signs
G. Streetscape Requirement	
Commercial	see Sec. 8.5.2.C.

Article 3.5. Neighborhood Transitions

Sec. 3.5.1. Applicability

A. The following neighborhood transition standards apply in the Mixed Use and Campus Districts when the following occurs:

1. The site immediately abuts a district boundary of an R-1, R-2, R-4, or R-6 district, except where the abutting property contains a civic use; or
2. The site immediately abuts a district boundary of an R-10 district where the abutting property is vacant or contains an existing detached house or attached house used for residential purposes.

B. Zone B does not apply to sites 50 feet or less in depth. In such cases, Zone C starts immediately adjacent to the Zone A protective yard.

C. Zones B and C do not apply to detached house, attached house, townhouse or apartment building types in RX- where 3 stories is the maximum height.

Sec. 3.5.2. Transition Zones

A. Zone A: Protective Yard

1. Intent

Intended to buffer and screen. Consists of vegetative landscaping and wall or fence. No buildings or structures allowed.

2. Location

Immediately abutting district boundary line.

3. Width

Varies (depends on protective yard type applied).

B. Zone B: Use Restricted

1. Intent

Intended to be occupied by open areas and low intensity uses, such as surface parking, alleys, landscaping, playgrounds, outdoor dining, community serving buildings and service-related structures.

2. Location

Located between Zone A and Zone C. Zone B starts at the inside edge of the Zone A protective yard (edge furthest from the district boundary line) and ends 50 feet from the district boundary line.

3. Width

50 feet from the district boundary line.

C. Zone C: Height and Form

1. Intent

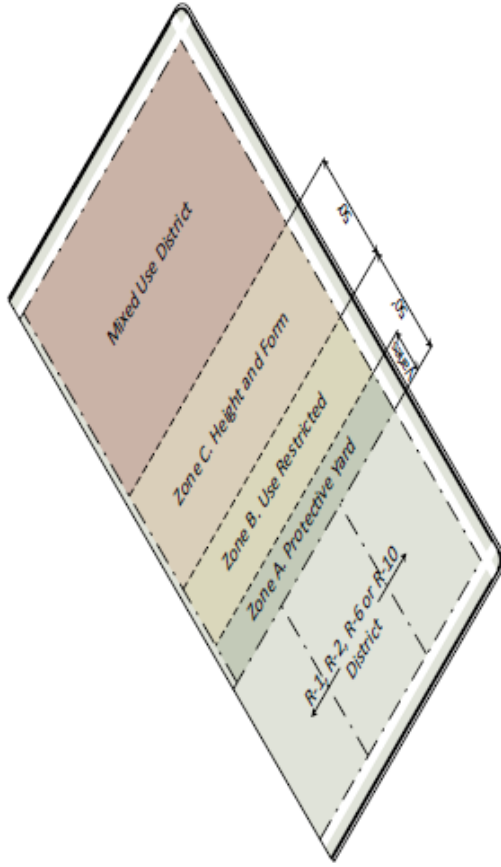
Intended to restrict the height and form of development so as to decrease the impact of new multi-story structures.

2. Location

Located beyond and adjacent to Zone B. Zone C extends from 50 to 100 feet from district boundary line. When Zone B does not exist, Zone C starts at the inside edge of the Zone A protective yard (edge furthest from the district boundary line).

3. Width

50 to 100 feet from the district boundary line. When Zone B does not exist, Zone C extends a maximum of 50 feet from inside edge of the Zone A protective yard (edge furthest from the district boundary line).



Sec. 3.5.3. Zone A: Protective Yard

A. Type 1: Narrow (10 feet)

1. Width

A Type 1 protective yard must be an average width of at least 10 feet.

2. Installation Requirements

A Type 1 protective yard must include the following:

- a. A wall between 6.5 and 9 feet in height;
- b. Four shade trees per 100 lineal feet;
- c. Three understory trees per 100 lineal feet; and
- d. 40 shrubs per 100 lineal feet.

B. Type 2: Medium (20 feet)

1. Width

A Type 2 protective yard must be an average width of at least 20 feet.

2. Installation Requirements

A Type 2 protective yard must include the following:

- a. A wall or fence between 6.5 and 9 feet in height;
- b. Five shade trees per 100 lineal feet;
- c. Four understory trees per 100 lineal feet; and
- d. 30 shrubs per 100 lineal feet.

C. Type 3: Wide (50 feet)

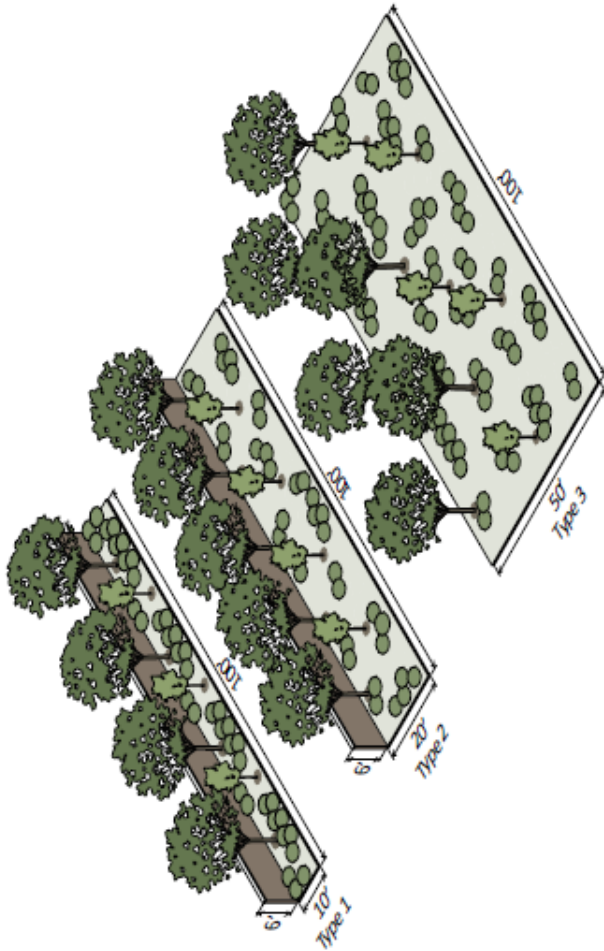
1. Width

A Type 3 protective yard must be an average width of at least 50 feet.

2. Installation Requirements

A Type 3 protective yard must include the following:

- a. Six shade trees per 100 lineal feet;
- b. Five understory canopy trees per 100 lineal feet; and
- c. 60 shrubs per 100 lineal feet.



3. Optional Provisions

- a. A fence or wall between 6.5 and 8 feet in height may be installed.
- b. In lieu of planting required shrubs, a berm with a minimum height of 3 feet may be installed.

4. Permitted uses

- a. Landscaping, fences, walls and berms.
- b. Swales, underground detention facilities and bioretention facilities.
Detention facilities must be located at least 20 feet from the district boundary line. Landscaping quantities specified in Sec. 3.5.3.C.2. above may not be reduced.

D. Design and Installation

1. A required protective yard may be replaced with a tree conservation area that meets the requirements of Article 9.1. Tree Conservation.
2. Required landscaping in a protective yard must meet the design and installation requirements of Sec. 7.2.4.

3. In no case shall required landscaping exceed 30% of the total lot area, see *Sec. 7.2.2.D*.
4. Protective yards must meet the location requirements of *Sec. 7.2.4.C*.
5. Fences, walls and berms located in a protective yard must meet the requirements of *Sec. 7.2.4.D*. Fences, walls and berms cannot be located in a protective yard when the protective yard is also a tree conservation area.

Sec. 3.5.4. Zone B: Use Restrictions

A. Permitted Activity

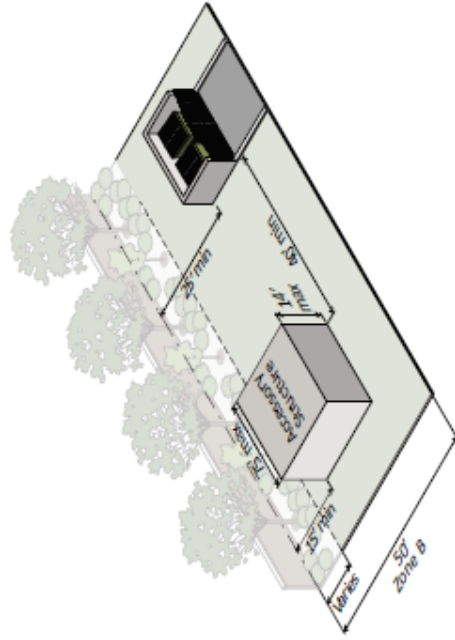
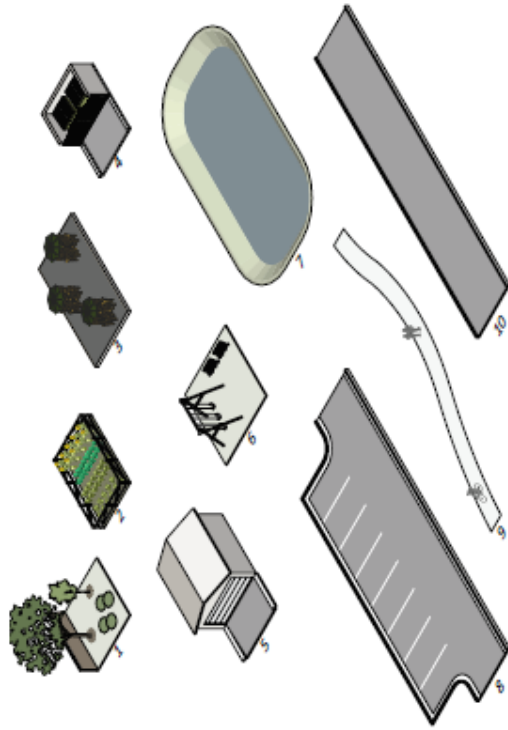
1. Protective yard, landscaping, fence, wall.
2. Garden.
3. Outdoor dining (not between the hours of 10 PM and 6 AM).
4. Service area.
5. Accessory garage, storage area.
6. Park, playground.
7. Stormwater detention.
8. Surface parking lot.
9. Path, walkway, sidewalk.
10. Alley.

B. Civic Building and Accessory Structures

1. An accessory structure can be no more than 14 feet in height and must be located at least 15 feet from the district boundary line.
2. Building walls parallel to the district boundary line can be no longer than 75 feet.
3. Buildings and structures must be spaced apart to maintain views. There must be a minimum of 40 feet between buildings and structures.

C. Service Areas

Trash collection, trash compaction, recycling collection and other similar service areas must be located at least 25 feet from the district boundary line.



Article 7.1 Parking

Sec. 7.1.1. Applicability

A. General

No permit for the construction, reconstruction, extension, repair or alteration of any building, structure or use of land and no building or land or any part of any building or land, may be occupied or used until parking has been provided in accordance with the requirements of this UDO.

B. Additions

1. A building or site may be renovated or repaired without providing additional parking, provided there is no increase in gross floor area or improved site area.

2. When a building, use or site is increased in gross floor area or improved site area by up to 25% cumulatively, any new parking that is required for the additional floor or site area shall comply with all of the related parking standards of this UDO.

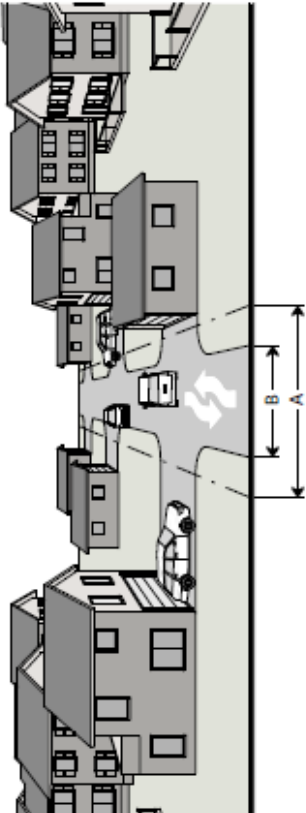
3. When the gross floor area or improved site area is increased by more than 25% cumulatively, both the existing use and the additional floor or site area must conform to the parking requirements of Sec. 7.1.2.C.

4. When the gross floor area or improved site area is increased by more than 25% cumulatively, both the existing parking and the new parking required for the additional floor or site area must conform to all related parking standards of this UDO.

Sec. 7.1.2.C Parking Requirements by Use

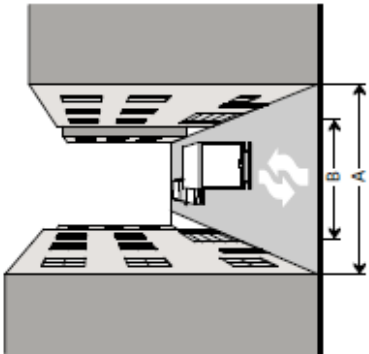
Office, :	1 Vehicle space per 400 SF of gross floor area
	1 short term Bicycle space per 10,000 SF of gross floor area, minimum 4
	1 long term Bicycle space per 5,000 SF of gross floor area, minimum 4

B. Alley, Residential



Width	
A Easement width	20'
Travelway	
B Travel lane	16'
B Travel lane, fire service route	20'

C. Alley, Mixed Use



Width	
A Easement width	24'
Travelway	
B Travel lane	20'